

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 807

Introduced by Assembly Member La Suer

February 18, 2005

An act to amend Section ~~288~~ 290.46 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 807, as amended, La Suer. Sex offenses: minors.

Existing law requires the Department of Justice, on or before July 1, 2005, to make specified information about certain sex offenders available to the public via an Internet Web site, including a photograph, physical description, and criminal history, and to update that information on an ongoing basis. This information also includes the home address of specified offenders and the community of residence and ZIP Code of others. Existing law also provides that certain offenders with less serious sexual offense histories, as specified, may apply to the Department of Justice for exclusion from the Internet Web site.

This bill would add persons who have been convicted of spousal rape accomplished by use of force or violence to the list of offenders whose home addresses are to be made available on the Internet Web site. This bill would also add persons convicted of incest, various offenses involving obscene matter depicting a minor or matter depicting a minor engaging in or simulating sexual conduct, sexual exploitation of a child, and indecent exposure to the list of offenders whose communities of residence and ZIP Codes will be made available on the Internet Web site.

~~Under existing law, any person who willfully and lewdly commits a lewd or lascivious act upon or with the body of a child who is under 14 years of age, with the intent of arousing, appealing to, or gratifying the sexual desires of that person or the child, is guilty of a felony, punishable by imprisonment for 3, 6, or 8 years.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 288 of the Penal Code is amended to~~
2 ~~read:~~

3 ~~SECTION 1. Section 290.46 of the Penal Code is amended to~~
4 ~~read:~~

5 290.46. (a) On or before the dates specified in this section,
6 the Department of Justice shall make available information
7 concerning persons who are required to register pursuant to
8 Section 290 to the public via an Internet Web site as specified in
9 this section. The department shall update the Web site on an
10 ongoing basis. All information identifying the victim by name,
11 birth date, address, or relationship to the registrant shall be
12 excluded from the Web site. The name or address of the person's
13 employer and the listed person's criminal history other than the
14 specific crimes for which the person is required to register shall
15 not be included on the Web site. The Web site shall be translated
16 into languages other than English as determined by the
17 department.

18 (b) (1) On or before July 1, 2005, with respect to a person
19 who has been convicted of the commission or the attempted
20 commission of any of the offenses listed in this subdivision or the
21 statutory predecessors of any of these offenses, or any offense
22 which, if committed or attempted to be committed in this state,
23 would have been punishable as one or more of the offenses listed
24 in this subdivision, the Department of Justice shall make
25 available to the public via the Internet Web site his or her names
26 and known aliases, a photograph, a physical description,
27 including gender and race, date of birth, criminal history, the
28 address at which the person resides, and any other information

1 that the Department of Justice deems relevant, but not the
2 information excluded pursuant to subdivision (a).

3 (2) This subdivision shall apply to the following offenses:

4 (A) Subdivision (b) of Section 207.

5 (B) Subdivision (b) of Section 209, except kidnapping to
6 commit robbery.

7 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

8 (D) *Paragraph (1) of subdivision (a) of Section 262.*

9 (E) Section 264.1.

10 ~~(F)~~

11 (F) Section 269.

12 ~~(F)~~

13 (G) Subdivision (c) or (d) of Section 286.

14 ~~(G)~~

15 (H) Subdivision (a), (b), or (c) of Section 288, provided that
16 the offense is a felony.

17 ~~(H)~~

18 (I) Subdivision (c) or (d) of Section 288a.

19 ~~(I)~~

20 (J) Section 288.5.

21 ~~(J)~~

22 (K) Subdivision (a) or (j) of Section 289.

23 (3) This subdivision shall also apply to any person who has
24 ever been adjudicated a sexually violent predator as defined in
25 Section 6600 of the Welfare and Institutions Code.

26 (c) (1) On or before July 1, 2005, with respect to a person
27 who has been convicted of the commission or the attempted
28 commission of any of the offenses listed in paragraph (2) or the
29 statutory predecessors of any of these offenses, or any offense
30 which, if committed or attempted to be committed in this state,
31 would have been punishable as one or more of the offenses listed
32 in this subdivision, the Department of Justice shall make
33 available to the public via the Internet Web site his or her names
34 and known aliases, a photograph, a physical description,
35 including gender and race, date of birth, criminal history, the
36 community of residence and ZIP Code in which the person
37 resides, and any other information that the Department of Justice
38 deems relevant, but not the information excluded pursuant to
39 subdivision (a). However, the address at which the person resides
40 shall not be disclosed until a determination is made that the

1 person is, by virtue of his or her additional prior or subsequent
2 conviction of an offense listed in paragraph (2) of subdivision (a)
3 of Section 290, subject to this subdivision. On or before July 1,
4 2006, the Department of Justice shall determine whether any
5 person convicted of an offense listed in paragraph (2) also has
6 one or more prior or subsequent convictions of an offense listed
7 in paragraph (2) of subdivision (a) of Section 290, and, for those
8 persons, the Department of Justice shall make available to the
9 public via the Internet Web site the address at which the person
10 resides.

11 (2) This subdivision shall apply to the following offenses,
12 provided that the person has one or more prior or subsequent
13 convictions of an offense listed in paragraph (2) of subdivision
14 (a) of Section 290:

15 (A) Section 220, except assault to commit mayhem.

16 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

17 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
18 (i), of Section 286.

19 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
20 (i), of Section 288a.

21 (E) Subdivision (b), (d), (e), or (i) of Section 289.

22 (d) (1) On or before July 1, 2005, with respect to a person
23 who has been convicted of the commission or the attempted
24 commission of any of the offenses listed in this subdivision or the
25 statutory predecessors of any of these offenses, or of any offense
26 which, if committed or attempted to be committed in this state,
27 would have been punishable as one or more of the offenses listed
28 in this subdivision, the Department of Justice shall make
29 available to the public via the Internet Web site his or her names
30 and known aliases, a photograph, a physical description,
31 including gender and race, date of birth, criminal history, the
32 community of residence and ZIP Code in which the person
33 resides, and any other information that the Department of Justice
34 deems relevant, but not the information excluded pursuant to
35 subdivision (a) or the address at which the person resides.

36 (2) This subdivision shall apply to the following offenses:

37 (A) Section 220, except assault to commit mayhem, with no
38 prior or subsequent conviction of an offense listed in paragraph
39 (2) of subdivision (a) of Section 290.

1 (B) Subdivision (a) of Section 243.4, provided that the offense
2 is a felony.

3 (C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261,
4 with no prior or subsequent conviction of an offense listed in
5 paragraph (2) of subdivision (a) of Section 290.

6 (D) Section 266, provided that the offense is a felony.

7 (E) Section 266c, provided that the offense is a felony.

8 (F) Section 266j.

9 (G) Section 267.

10 (H) *Section 285.*

11 (I) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
12 (i), of Section 286, with no prior or subsequent conviction of an
13 offense listed in paragraph (2) of subdivision (a) of Section 290.

14 ~~(H)~~

15 (J) Subdivision (c) of Section 288, provided that the offense is
16 a misdemeanor.

17 ~~(J)~~

18 (K) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
19 (i), of Section 288a, with no prior or subsequent conviction of an
20 offense listed in paragraph (2) of subdivision (a) of Section 290.

21 ~~(K)~~

22 (L) Subdivision (b), (d), (e), or (i) of Section 289, with no
23 prior or subsequent conviction of an offense listed in paragraph
24 (2) of subdivision (a) of Section 290.

25 ~~(L)~~

26 (M) *Section 311.1.*

27 (N) *Subdivisions (b), (c), and (d) of Section 311.2.*

28 (O) *Section 311.3.*

29 (P) *Section 311.4.*

30 (Q) *Section 311.10.*

31 (R) *Section 311.11.*

32 (S) *Subdivision 1 of Section 314.*

33 (T) *Section 647.6.*

34 (e) (1) If a person has been convicted of the commission or
35 the attempted commission of any of the offenses listed in this
36 subdivision or the statutory predecessors of any of these offenses,
37 or of any offense which, if committed or attempted to be
38 committed in this state, would have been punishable as one or
39 more of the offenses listed in this subdivision, and he or she has
40 been convicted of no other offense listed in subdivision (b), (c),

1 or (d) other than those listed in this subdivision, that person may
2 file an application for exclusion from the Internet Web site with
3 the Department of Justice. If the department determines that the
4 person meets the requirements of this subdivision, the department
5 shall grant the exclusion and no information concerning him or
6 her shall be made available via the Internet Web site described in
7 this section. He or she bears the burden of proving the facts that
8 make him or her eligible for exclusion from the Internet Web
9 site. However, a person who has filed for or been granted an
10 exclusion from the Internet Web site is not relieved of his or her
11 duty to register as a sex offender pursuant to Section 290 nor
12 from any otherwise applicable provision of law.

13 (2) This subdivision shall apply to the following offenses:

14 (A) A felony violation of subdivision (a) of Section 243.4.

15 (B) Section 647.6, provided the offense is a misdemeanor.

16 (C) An offense listed in subdivision (b), (c), or (d) if the
17 offender is eligible for, granted, and successfully completes
18 probation pursuant to Section 1203.066 of the Penal Code.

19 (f) The Department of Justice shall make a reasonable effort to
20 provide notification to persons who have been convicted of the
21 commission or attempted commission of an offense specified in
22 subdivision (b), (c), or (d), that on or before July 1, 2005, the
23 department is required to make information about him or her
24 available to the public via an Internet Web site as specified in
25 this section. The Department of Justice shall also make a
26 reasonable effort to provide notice that he or she may be eligible
27 for exclusion from the Internet Web site if he or she may have
28 been convicted of an offense for which exclusion is available
29 pursuant to subdivision (e).

30 (g) Notwithstanding Section 6254.5 of the Government Code,
31 disclosure of information pursuant to this section is not a waiver
32 of exemptions under Chapter 3.5 (commencing with Section
33 6250) of Title 1 of Division 7 of the Government Code and does
34 not affect other statutory restrictions on disclosure in other
35 situations.

36 (h) (1) Any person who uses information disclosed pursuant
37 to the Internet Web site to commit a misdemeanor shall be
38 subject to, in addition to any other penalty or fine imposed, a fine
39 of not less than ten thousand dollars (\$10,000) and not more than
40 fifty thousand dollars (\$50,000).

1 (2) Any person who uses information disclosed pursuant to the
2 Internet Web site to commit a felony shall be punished, in
3 addition and consecutive to any other punishment, by a five-year
4 term of imprisonment in the state prison.

5 (i) Any person who is required to register pursuant to Section
6 290 who enters the Web site is punishable by a fine not
7 exceeding one thousand dollars (\$1,000), imprisonment in a
8 county jail for a period not to exceed six months, or by both that
9 fine and imprisonment.

10 (j) (1) A person is authorized to use information disclosed
11 pursuant to this section only to protect a person at risk.

12 (2) Except as authorized under paragraph (1) or any other
13 provision of law, use of any information that is disclosed
14 pursuant to this section for purposes relating to any of the
15 following is prohibited:

16 (A) Health insurance.

17 (B) Insurance.

18 (C) Loans.

19 (D) Credit.

20 (E) Employment.

21 (F) Education, scholarships, or fellowships.

22 (G) Housing or accommodations.

23 (H) Benefits, privileges, or services provided by any business
24 establishment.

25 (3) This section shall not affect authorized access to, or use of,
26 information pursuant to, among other provisions, Sections 11105
27 and 11105.3, Section 8808 of the Family Code, Sections 777.5
28 and 14409.2 of the Financial Code, Sections 1522.01 and
29 1596.871 of the Health and Safety Code, and Section 432.7 of
30 the Labor Code.

31 (4) (A) Any use of information disclosed pursuant to this
32 section for purposes other than those provided by paragraph (1)
33 or in violation of paragraph (2) shall make the user liable for the
34 actual damages, and any amount that may be determined by a
35 jury or a court sitting without a jury, not exceeding three times
36 the amount of actual damage, and not less than two hundred fifty
37 dollars (\$250), and attorney's fees, exemplary damages, or a civil
38 penalty not exceeding twenty-five thousand dollars (\$25,000).

39 (B) Whenever there is reasonable cause to believe that any
40 person or group of persons is engaged in a pattern or practice of

1 misuse of the information available via the Internet Web site in
2 violation of paragraph (2), the Attorney General, any district
3 attorney, or city attorney, or any person aggrieved by the misuse
4 is authorized to bring a civil action in the appropriate court
5 requesting preventive relief, including an application for a
6 permanent or temporary injunction, restraining order, or other
7 order against the person or group of persons responsible for the
8 pattern or practice of misuse. The foregoing remedies shall be
9 independent of any other remedies or procedures that may be
10 available to an aggrieved party under other provisions of law,
11 including Part 2 (commencing with Section 43) of Division 1 of
12 the Civil Code.

13 (k) On or before July 1, 2006, and every year thereafter, the
14 Department of Justice shall make a report to the Legislature
15 concerning the operation of this section.

16 (l) The Department of Justice and its employees shall be
17 immune from liability for good faith conduct under this section.

18 ~~288. (a) Any person who willfully and lewdly commits any~~
19 ~~lewd or lascivious act, including any of the acts constituting other~~
20 ~~crimes provided for in Part 1, upon or with the body, or any part~~
21 ~~or member thereof, of a child who is under the age of 14 years,~~
22 ~~with the intent of arousing, appealing to, or gratifying the lust,~~
23 ~~passions, or sexual desires of that person or the child, is guilty of~~
24 ~~a felony and shall be punished by imprisonment in the state~~
25 ~~prison for three, six, or eight years.~~

26 ~~(b) (1) Any person who commits an act described in~~
27 ~~subdivision (a) by use of force, violence, duress, menace, or fear~~
28 ~~of immediate and unlawful bodily injury on the victim or another~~
29 ~~person, is guilty of a felony and shall be punished by~~
30 ~~imprisonment in the state prison for three, six, or eight years.~~

31 ~~(2) Any person who is a caretaker and commits an act~~
32 ~~described in subdivision (a) upon a dependent person by use of~~
33 ~~force, violence, duress, menace, or fear of immediate and~~
34 ~~unlawful bodily injury on the victim or another person, with the~~
35 ~~intent described in subdivision (a), is guilty of a felony and shall~~
36 ~~be punished by imprisonment in the state prison for three, six, or~~
37 ~~eight years.~~

38 ~~(c) (1) Any person who commits an act described in~~
39 ~~subdivision (a) with the intent described in that subdivision, and~~
40 ~~the victim is a child of 14 or 15 years, and that person is at least~~

1 ~~10 years older than the child, is guilty of a public offense and~~
2 ~~shall be punished by imprisonment in the state prison for one,~~
3 ~~two, or three years, or by imprisonment in a county jail for not~~
4 ~~more than one year. In determining whether the person is at least~~
5 ~~10 years older than the child, the difference in age shall be~~
6 ~~measured from the birth date of the person to the birth date of the~~
7 ~~child.~~

8 ~~(2) Any person who is a caretaker and commits an act~~
9 ~~described in subdivision (a) upon a dependent person, with the~~
10 ~~intent described in subdivision (a), is guilty of a public offense~~
11 ~~and shall be punished by imprisonment in the state prison for~~
12 ~~one, two, or three years, or by imprisonment in a county jail for~~
13 ~~not more than one year.~~

14 ~~(d) In any arrest or prosecution under this section or Section~~
15 ~~288.5, the peace officer, district attorney, and the court shall~~
16 ~~consider the needs of the child victim or dependent person and~~
17 ~~shall do whatever is necessary, within existing budgetary~~
18 ~~resources, and constitutionally permissible to prevent~~
19 ~~psychological harm to the child victim or to prevent~~
20 ~~psychological harm to the dependent person victim resulting~~
21 ~~from participation in the court process.~~

22 ~~(e) Upon the conviction of any person for a violation of~~
23 ~~subdivision (a) or (b), the court may order, in addition to any~~
24 ~~other penalty or fine imposed, the defendant to pay an additional~~
25 ~~fine not to exceed ten thousand dollars (\$10,000). In setting the~~
26 ~~amount of the fine, the court shall consider any relevant factors,~~
27 ~~including, but not limited to, the seriousness and gravity of the~~
28 ~~offense, the circumstances of its commission, whether the~~
29 ~~defendant derived any economic gain as a result of the crime, and~~
30 ~~the extent to which the victim suffered economic losses as a~~
31 ~~result of the crime. Every fine imposed and collected under this~~
32 ~~section shall be deposited in the Victim-Witness Assistance Fund~~
33 ~~to be available for appropriation to fund child sexual exploitation~~
34 ~~and child sexual abuse victim counseling centers and prevention~~
35 ~~programs pursuant to Section 13837.~~

36 ~~If the court orders a fine imposed pursuant to this subdivision,~~
37 ~~the actual administrative cost of collecting that fine, not to~~
38 ~~exceed 2 percent of the total amount paid, may be paid into the~~
39 ~~general fund of the county treasury for the use and benefit of the~~
40 ~~county.~~

~~(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:~~

~~(1) “Caretaker” means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:~~

~~(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.~~

~~(B) Clinics.~~

~~(C) Home health agencies.~~

~~(D) Adult day health care centers.~~

~~(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.~~

~~(F) Sheltered workshops.~~

~~(G) Camps.~~

~~(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.~~

~~(I) Respite care facilities.~~

~~(J) Foster homes.~~

~~(K) Regional centers for persons with developmental disabilities.~~

~~(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.~~

~~(M) An agency that supplies in-home supportive services.~~

~~(N) Board and care facilities.~~

~~(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.~~

~~(P) Private residences.~~

~~(2) “Board and care facilities” means licensed or unlicensed facilities that provide assistance with one or more of the following activities:~~

~~(A) Bathing.~~

~~(B) Dressing.~~

1 ~~(C) Grooming.~~

2 ~~(D) Medication storage.~~

3 ~~(E) Medical dispensation.~~

4 ~~(F) Money management.~~

5 ~~(3) “Dependent person” means any person who has a physical~~
6 ~~or mental impairment that substantially restricts his or her ability~~
7 ~~to carry out normal activities or to protect his or her rights;~~
8 ~~including, but not limited to, persons who have physical or~~
9 ~~developmental disabilities or whose physical or mental abilities~~
10 ~~have significantly diminished because of age. “Dependent~~
11 ~~person” includes any person who is admitted as an inpatient to a~~
12 ~~24-hour health facility, as defined in Sections 1250, 1250.2, and~~
13 ~~1250.3 of the Health and Safety Code.~~

14 ~~(g) Paragraph (2) of subdivision (b) and paragraph (2) of~~
15 ~~subdivision (c) apply to the owners, operators, administrators,~~
16 ~~employees, independent contractors, agents, or volunteers~~
17 ~~working at these public or private facilities and only to the extent~~
18 ~~that the individuals personally commit, conspire, aid, abet, or~~
19 ~~facilitate any act prohibited by paragraph (2) of subdivision (b)~~
20 ~~and paragraph (2) of subdivision (c).~~

21 ~~(h) Paragraph (2) of subdivision (b) and paragraph (2) of~~
22 ~~subdivision (c) do not apply to a caretaker who is a spouse of, or~~
23 ~~who is in an equivalent domestic relationship with, the dependent~~
24 ~~person under care.~~